



INDEPENDENT CITIES
RISK MANAGEMENT
AUTHORITY

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Auto Physical Damage Program Memorandum of Coverage 2023-2024



TABLE OF CONTENTS	2
DECLARATIONS	3
ENDORSEMENT NO. 1	5
ENDORSEMENT NO. 2	6
PREAMBLE	7
POOLED AUTO PHYSICAL DAMAGE PROGRAM	7
MEMORANDUM OF COVERAGE	7
PART II: CONDITIONS	7
1. MEMORANDUM PERIOD	7
2. COVERAGE.....	8
3. WHO IS COVERED.....	8
4. NOTICE OF LOSS	8
5. PREMIUM.....	8
6. DECLARATIONS	8
7. DEFINITIONS.....	8
8. LIMIT OF COVERAGE.....	8
9. MEMBER DEDUCTIBLE	9
10. SEVERABILITY OF INTERESTS.....	9
11. INSPECTIONS AND ANNUAL SCHEDULE OF VEHICLES UPDATES	9
12. RECORDS	9
13. CANCELLATION AND TERMINATION	9
14. OTHER INSURANCE	9
15. OTHER GOVERNING DOCUMENTS.....	10
16. REPORTING CLAIMS AND MEMBER COOPERATION	10
17. RECOVERIES.....	10
18. RESOLUTION OF DISPUTES REGARDING COVERAGE.....	10
19. ASSIGNMENT	10
20. FRAUDULENT CLAIMS.....	10
21. ACTION AGAINST ICRMA.....	10
22. MEMBER’S DUTY TO MITIGATE	11
23. DROP DOWN EXCLUSION/BANKRUPTCY OR INSOLVENCY.....	11
24. INTERPRETATION AND GOVERNING LAW	11
PART III: COVERAGE DETERMINATION AND APPEAL	12
1. COVERAGE DETERMINATION.....	12
2. APPEAL	12
PART IV: DEFINITIONS	12
1. EXCESS COVERAGE	13
2. LIMITS OF COVERAGE	13
3. LOSS.....	13
4. MEMBER	13
5. MEMBER DEDUCTIBLE	13
6. MEMORANDUM	13
7. MEMORANDUM PERIOD	13
8. SELF-INSURED RETENTION	13



**Independent Cities Risk Management Authority
Pooled Auto Physical Damage Program
Memorandum of Coverage
2023-2024**

DECLARATIONS

MEMBER: Independent Cities Risk Management Authority, et al., as per Endorsement No. 1

18201 Von Karman, #200
Irvine, CA 92612

MEMORANDUM PERIOD: From 7-1-2023 to 7-1-2024
12:01 A.M. (Pacific Time)

VEHICLES COVERED: Vehicle Schedule on file with the Independent Cities Risk Management Authority and as submitted to Hanover Insurance Company

LIMIT OF COVERAGE: Hanover Insurance Company: up to \$10,000,000 (Excess of \$25,000 SELF-INSURED RETENTION, inclusive of \$10,000 MEMBER DEDUCTIBLE) and subject to all limits and sub-limits; Policy No. IHF D971786 02

SELF-INSURED RETENTION/DEDUCTIBLES: \$25,000 SELF-INSURED RETENTION each LOSS, inclusive of \$10,000 MEMBER DEDUCTIBLE

COVERAGE: The terms and conditions of coverage as granted by Hanover Insurance Company's Inland Marine Policy are incorporated into this MEMORANDUM, including all Exclusions, Terms, Conditions, Limits, Sub-Limits, and Additional Coverages contained in Policy No. IHF D971786 02



FORM AND ENDORSEMENTS:

Hanover Insurance Company's Inland
Marine Policy No. IHF D971786 02;
Independent Cities Risk Management
Authority Pooled Auto Physical Damage
Program Memorandum of Coverage 2021-
2022, Endorsement No. 1, and Endorsement
No. 2
Forming Part of the Agreement at Inception

ON BEHALF OF INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY

S. Ibarra
AUTHORIZED REPRESENTATIVE



**Independent Cities Risk Management Authority
Pooled Auto Physical Damage Program
Memorandum of Coverage
2023-2024**

ENDORSEMENT NO. 2

Consistent with the claims reporting requirements stated in Hanover Insurance Company’s Inland Marine Policy No. IHF D971786 02, Pooled Auto Physical Damage Program MEMBERS have an affirmative duty to “immediately” report LOSSES through Hanover’s National Claims Reporting Line and to ICRMA. LOSSES reported to ICRMA within thirty (30) working days shall be considered timely for purposes of the SELF-INSURED RETENTION set forth in this Pooled Auto Physical Damage Program Memorandum of Coverage.

Attached to and forming part of Independent Cities Risk Management Authority’s Pooled Auto Physical Damage Program Memorandum of Coverage 2023-2024.

Effective Date: July 1, 2023

ON BEHALF OF INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY

S. Ibarra

AUTHORIZED REPRESENTATIVE

**POOLED AUTO PHYSICAL DAMAGE PROGRAM
MEMORANDUM OF COVERAGE**

FOR THE

INDEPENDENT CITIES RISK MANAGEMENT AUTHORITY
(Hereinafter referred to as “ICRMA”)

This Memorandum of Coverage (MEMORANDUM) does not provide insurance, but instead provides for pooled risk-sharing. This MEMORANDUM is a negotiated agreement among the MEMBERS of the Independent Cities Risk Management Authority (ICRMA). No MEMBER is entitled to rely on any contract interpretation principles pertaining to contracts of adhesion or that require ambiguous language to be interpreted against the drafter of such agreement. This MEMORANDUM shall be applied according to the principles of contract law, as applied to joint powers authorities as discussed in case law interpreting memoranda of coverage, including but not limited to *Southgate Recreation and Park District v. California Association for Park and Recreation Services* (2003) 106 Cal.App.4th 293, and *City of South El Monte v. Southern Cal. Joint Powers Ins. Authority* (1995) 38 Cal.App.4th 1629, giving full effect to the intent of the MEMBERS of ICRMA, acting through the Board in adopting this MEMORANDUM. Any citation or reference to insurance law in interpreting this MEMORANDUM is only for purposes of illustration or comparison, and does not constitute a waiver by the MEMBERS of ICRMA of the position that this MEMORANDUM is not an insurance policy and that insurance law does not apply. Each MEMBER specifically waives and rejects the argument that this MEMORANDUM is an adhesion contract or is akin to or the functional equivalent of an insurance policy, or any similar arguments or positions. As ICRMA is not an insurer, it has no obligation to issue reservation of rights letters, nor does it have an obligation to provide “Cumis” counsel to a MEMBER in disputed coverage situations under Civil Code section 2860. Failure to provide notice to a MEMBER of any coverage issue shall not operate to waive any of the provisions of this MEMORANDUM.

In consideration of the deposit premium, each MEMBER agrees with its fellow MEMBERS as follows:

PART I: COVERAGE AGREEMENT

ICRMA will reimburse the MEMBER for LOSSES to a scheduled vehicle that is covered by the terms and conditions of the EXCESS COVERAGE, less any applicable MEMBER DEDUCTIBLE, up to the amount of the SELF-INSURED RETENTION. This MEMORANDUM incorporates the terms, provisions, and conditions of the EXCESS COVERAGE. The layers of coverage applicable to this MEMORANDUM are set forth in the Declarations.

PART II: CONDITIONS

The following conditions apply to this MEMORANDUM:

1. MEMORANDUM PERIOD

This MEMORANDUM is effective from July 1, 2023 to July 1, 2024, both days at 12:01 a.m. Pacific Time.

2. COVERAGE

This MEMORANDUM applies to LOSSES occurring during the MEMORANDUM PERIOD defined in the Declarations and herein.

3. WHO IS COVERED

Coverage is afforded to MEMBERS as defined herein.

4. NOTICE OF LOSS

In the event of a LOSS covered under this MEMORANDUM, the MEMBER shall give immediate notice thereof to ICRMA of such LOSS. LOSSES reported to ICRMA within thirty (30) working days shall be considered timely for purposes of the SELF-INSURED RETENTION set forth in this MEMORANDUM.

Notice to ICRMA of a LOSS as set forth above must contain particulars sufficient to determine coverage, and all reasonably obtainable information with respect to the date, place, and circumstances of the LOSS shall be given to ICRMA as soon as possible.

The MEMBERS acknowledge and agree that it is crucial to efficient claims administration that any LOSS shall be timely reported, that failure to report timely can result in a denial of coverage, and that each MEMBER is responsible for timely reporting. ICRMA shall have the right to deny coverage, in whole or in part, under this MEMORANDUM for failure to provide notice as required herein.

5. PREMIUM

Each MEMBER shall pay its deposit premium, which is the amount to be paid by each MEMBER for the coverage provided.

6. DECLARATIONS

This MEMORANDUM incorporates the terms, provisions, and conditions of the EXCESS COVERAGE. ICRMA shall have the same rights as provided to the EXCESS COVERAGE.

By acceptance of this MEMORANDUM, the MEMBER agrees this MEMORANDUM sets forth the terms, conditions, and limitations of coverage provided to MEMBERS for auto physical damage coverage and that it embodies all agreements existing between the MEMBER and ICRMA or any of its agents relating to this MEMORANDUM. The terms of this MEMORANDUM may not be changed or waived except by amendment made a part of this MEMORANDUM; nor shall notice to any agent or knowledge possessed by any agent or by any other person be held to effect a waiver or change in any part of this MEMORANDUM.

7. DEFINITIONS

Throughout this MEMORANDUM words and phrases shown in capital letters have special meaning. This MEMORANDUM incorporates the definitions of the EXCESS COVERAGE except where terms have been defined here. Defined terms are presented in Part IV of the MEMORANDUM.

8. LIMIT OF COVERAGE

The LIMIT OF COVERAGE attributable directly to ICRMA for each LOSS shall be the amount of the SELF-INSURED RETENTION, less the applicable per occurrence MEMBER DEDUCTIBLE, as stated in the Declarations. In addition to this layer of coverage, ICRMA at its discretion may purchase EXCESS COVERAGE from any insurer, reinsurer, pool, or entity authorized for risk transfer in ICRMA's governing documents.

9. MEMBER DEDUCTIBLE

The MEMBER is obligated to pay the MEMBER DEDUCTIBLE arising from a LOSS, as outlined in the Declarations. ICRMA's SELF-INSURED RETENTION shall be reduced by any applicable MEMBER DEDUCTIBLE.

10. SEVERABILITY OF INTERESTS

In the event of a LOSS that involves more than one MEMBER, this MEMORANDUM shall cover each such MEMBER as if a separate MEMORANDUM had been issued to each MEMBER, except that ICRMA's coverage for all MEMBERS shall not exceed the LIMIT OF COVERAGE set forth in the Declarations. The inclusion of more than one MEMBER in a LOSS under this MEMORANDUM shall not operate to increase the LIMIT OF COVERAGE, SELF-INSURED RETENTION, or the MEMBER DEDUCTIBLE.

11. INSPECTIONS AND ANNUAL SCHEDULE OF VEHICLES UPDATES

ICRMA or its duly authorized representatives shall be permitted at reasonable times during the continuation of this MEMORANDUM to inspect the covered vehicles owned or leased by the MEMBER and to examine the MEMBERS' Schedule of Vehicles and books or records as they relate to coverage afforded or requested to be afforded by this MEMORANDUM.

For each coverage period, MEMBERS are required to report and ICRMA shall maintain accurate records of MEMBERS' covered vehicles and related values. MEMBERS shall annually review, update and submit their Schedule of Vehicles to ICRMA to ensure the Schedule of Vehicles is complete and that values trend with changes in the value of the vehicles over time should they require repair or replacement, if severely damaged or destroyed.

A MEMBER'S new or recently acquired/leased vehicles shall be covered for LOSSES provided they are scheduled within four (4) months of acquisition/rental.

12. RECORDS

It is hereby understood and agreed that the Schedule of Vehicles and related records and books kept by the MEMBER must be sufficient to ICRMA when determining the amount of LOSS or damage covered hereunder.

13. CANCELLATION AND TERMINATION

This MEMORANDUM may, with respect to any MEMBER, be cancelled by ICRMA either for the then-current MEMORANDUM PERIOD or, in the event of expulsion, permanently upon the occurrence of the events and under terms set forth in the ICRMA Joint Powers Agreement and the Bylaws.

This MEMORANDUM may be terminated at any time in accordance with the Bylaws.

14. OTHER INSURANCE

This MEMORANDUM has been written and accepted recognizing that MEMBERS may have purchased or otherwise have available insurance protecting the MEMBER from risks or LOSSES for which the MEMBER also is protected under this MEMORANDUM. In consideration of the deposit premium for which this MEMORANDUM is issued, it is agreed, intended and understood that if the MEMBER has other valid and collectible insurance, whether primary, excess, contingent, or on any other basis, against a LOSS or risk also covered by this MEMORANDUM, ICRMA shall not contribute to payment for that risk or LOSS unless and until any other valid and collectible insurance has been exhausted and then only to the extent by which the LOSS exceeds the available insurance coverage subject to the LIMIT OF COVERAGE provisions set forth in this MEMORANDUM, provided however, that a MEMBER may purchase insurance for the specific purpose of applying in excess of the LIMIT OF COVERAGE stated in this

MEMORANDUM and such excess insurance shall not be considered other valid and collectible insurance for the purposes of this provision.

15. OTHER GOVERNING DOCUMENTS

This MEMORANDUM is subject to the ICRMA Joint Powers Agreement, the Bylaws, the Program Underwriting & Administration Policy Manual, and all other ICRMA governing documents.

16. REPORTING CLAIMS AND MEMBER COOPERATION

The MEMBER shall report LOSSES consistent with the requirements of Endorsement No. 2 of this MEMORANDUM for any LOSS reasonably likely to exceed the MEMBER DEDUCTIBLE.

The MEMBER shall: cooperate with ICRMA and assist with any investigation; cooperate and assist ICRMA in enforcing any right of contribution or subrogation in which ICRMA may have an interest by virtue of a payment made pursuant to this MEMORANDUM; and use due diligence and take all necessary actions reasonably practicable to avoid or diminish any LOSS of or damage to the vehicle herein covered.

17. RECOVERIES

ICRMA shall have the right to salvage, or to any recovery made by the MEMBER or right of recovery that the MEMBER may have against any other person or entity. ICRMA either directly or through its designated agents shall have the option to decide whether to pursue those rights at the expense of ICRMA, or whether to allow the MEMBER to pursue those rights at the MEMBER's expense. If ICRMA pursues subrogation of a LOSS, the funds from any recovery shall be allocated in accordance with the provisions of the EXCESS COVERAGE.

Should the MEMBER salvage any part of the vehicle, it shall inform ICRMA of any monies recovered and such monies shall either be forwarded to ICRMA, or the total claim amount shall be reduced by the salvage amount received by the MEMBER. Failure to disclose salvage recovery by the MEMBER shall be grounds for denial of the claim by ICRMA.

18. RESOLUTION OF DISPUTES REGARDING COVERAGE

All coverage disputes shall be resolved in accordance with Part III of the MEMORANDUM.

19. ASSIGNMENT

A MEMBER may not transfer or assign its rights, duties or interest under this MEMORANDUM without ICRMA's written consent, given by way of written Endorsement.

20. FRAUDULENT CLAIMS

If a MEMBER shall make any claim knowing the same to be materially false or fraudulent, as regards amount or otherwise, this MEMORANDUM shall become void as respects that MEMBER and all claims hereunder to which the MEMBER may be or is otherwise entitled shall be forfeited.

21. ACTION AGAINST ICRMA

No action shall lie against ICRMA unless, as a condition precedent thereto, the MEMBER shall have fully complied with all the terms of this MEMORANDUM and exhausted all remedies offered in this MEMORANDUM and ICRMA's governing documents.

22. MEMBER'S DUTY TO MITIGATE

Following a LOSS, as a condition to any and all obligations of ICRMA hereunder, the MEMBER is obligated to take all reasonable steps to mitigate any LOSS. In the event the MEMBER fails to take reasonable steps in mitigation, ICRMA may deny coverage for that portion of the LOSS which could have been avoided through timely application of reasonable steps in mitigation.

Among the acts of mitigation which the MEMBER shall be obligated to carry out is to cease taking a continuing action which is the subject of a LOSS where ICRMA finds the continuing action is likely to unnecessarily increase the exposure of ICRMA to continuing damages during the pendency of the adjudication of the LOSS. The MEMBER shall be given at least seven (7) working days' notice of its obligation to thereafter take mitigating action. If the MEMBER fails to follow the directive of ICRMA, ICRMA may, thereafter, decline to extend the coverage or, if previously extended to, thereafter, withdraw or place a limit on the amount of money ICRMA will pay for the LOSS.

The MEMBER for which coverage is to be withdrawn or limited shall receive specific notice from ICRMA.

23. DROP DOWN EXCLUSION/BANKRUPTCY OR INSOLVENCY

ICRMA's LIMIT OF COVERAGE shall not be increased for any reason, including, but not limited to, the refusal or inability, for any reason, of the MEMBER to pay the MEMBER DEDUCTIBLE or by the refusal or inability of any underlying or excess insurer to pay, whether by reason of insolvency, bankruptcy, or otherwise.

Bankruptcy or insolvency of the MEMBER or any MEMBER shall not relieve ICRMA of any of its obligations hereunder nor shall such bankruptcy or insolvency increase ICRMA's obligations hereunder.

The LIMIT OF COVERAGE stated in the Declarations consists of (1) a SELF-INSURED RETENTION amount provided by ICRMA, inclusive of the MEMBER DEDUCTIBLE, and (2) the remaining amount up to the full LIMIT OF COVERAGE indicated in the Declarations which may be provided by EXCESS COVERAGE purchased by ICRMA. In the event of the EXCESS COVERAGES' insolvency, inability, or unwillingness to pay EXCESS COVERAGE, ICRMA will be liable only for its SELF-INSURED RETENTION, and will not be obligated to pay any part of the EXCESS COVERAGE, provided, however, that ICRMA retains the right to pay any part of the EXCESS COVERAGE that it, at its sole discretion, may determine appropriate or equitable.

24. INTERPRETATION AND GOVERNING LAW

This MEMORANDUM shall be interpreted without regard to the draftsman. The terms and intent of this MEMORANDUM, with respect to the rights and obligations of any MEMBER or ICRMA, shall be interpreted and construed on the express assumption that each participated equally in its drafting.

This MEMORANDUM shall be governed and construed in accordance with the laws of the State of California.

PART III: COVERAGE DETERMINATION AND APPEAL

1. COVERAGE DETERMINATION

Upon receipt of a LOSS reported by a MEMBER seeking coverage under this MEMORANDUM, ICRMA's Third-Party Adjuster, in cooperation with the EXCESS COVERAGE, shall within a reasonable time after receipt of said notice, make a determination of any issue of coverage affecting the MEMBER, if any. Upon making a determination of coverage under the MEMORANDUM, ICRMA's Third-Party Adjuster shall notify the MEMBER seeking coverage under this MEMORANDUM of ICRMA's coverage determination, in writing.

The written determination of coverage to be prepared by ICRMA's Third-Party Adjuster shall advise the MEMBER whether ICRMA is denying rights to coverage under the MEMORANDUM for the LOSS sustained. In the event that coverage for a LOSS under the MEMORANDUM is denied to the MEMBER, ICRMA's Third-Party Adjuster shall inform the MEMBER in writing of the reasons for denial and the appeal process.

All written determinations by ICRMA's Third Party Adjuster regarding coverages afforded to a MEMBER shall be deemed final and binding upon all parties to the MEMORANDUM unless an aggrieved MEMBER files a timely Notice of Appeal of the decision to ICRMA's Executive Director in the manner specified in Part III, Section 2. Appeal.

2. APPEAL

MEMBERS UNDERSTAND THAT BY PARTICIPATING IN THE POOLED AUTO PHYSICAL DAMAGE PROGRAM THEY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY AND TO CERTAIN TYPES OF DAMAGES FOR THE PURPOSE OF ADJUDICATING ANY DISPUTE OR DISAGREEMENT AS TO COVERAGE IN CONNECTION WITH THE POOLED AUTO PHYSICAL DAMAGE PROGRAM.

Within sixty (60) calendar days of the participating MEMBER's receipt of a writing setting forth ICRMA's coverage position which the MEMBER disputes, the MEMBER shall submit the dispute in writing to ICRMA's Executive Director. Within twenty (20) calendar days of receipt of such writing, the Executive Director or designee shall acknowledge receipt and place the matter on the agenda of the Claims Committee for consideration at its next scheduled meeting. The MEMBER and/or ICRMA may, but are not required to, make a written and/or oral presentation to the Claims Committee. Within twenty (20) calendar days following that meeting, the Claims Committee shall render to the MEMBER its written decision on the dispute or an explanation of why a decision could not be rendered and the timing of the Claims Committee's further consideration of the issue. If not satisfied with the Claims Committee's decision, the MEMBER or Coverage Counsel or General Counsel, within twenty (20) calendar days of receipt of that decision, must submit a written notice of appeal to the Executive Director for consideration by the Board at its next scheduled meeting for which the dispute can be timely placed on the agenda. Within twenty (20) calendar days following the meeting of the Board, the Board shall render to the MEMBER its written decision on the dispute, or an explanation of why a decision could not be rendered and the timing of any further consideration of the issue by the Board.

The decision of the Board shall be final and binding.

PART IV: DEFINITIONS

In addition to the definitions provided in the EXCESS COVERAGE, the following additional definitions apply to all applicable coverages in this MEMORANDUM.

1. **EXCESS COVERAGE** - shall mean insurance or excess coverage of any kind purchased by ICRMA for the benefit of ICRMA and the MEMBERS and specifically identified in the Declarations of this MEMORANDUM.
2. **LIMITS OF COVERAGE** - shall mean the amount of coverage stated in the Declarations subject to any applicable sub-limits.
3. **LOSS** - shall have the same meaning as in the EXCESS COVERAGE.
4. **MEMBER** - shall mean the entity identified in the Declarations.
5. **MEMBER DEDUCTIBLE** - shall mean the amount stated in the Declarations which the MEMBER must pay before ICRMA is obligated to make any payment. If multiple MEMBERS are involved in any one LOSS, each MEMBER remains obligated to pay its MEMBER DEDUCTIBLE prior to coverage under this MEMORANDUM.
6. **MEMORANDUM** - shall mean the Pooled Auto Physical Damage Memorandum of Coverage for ICRMA including any endorsements thereto.
7. **MEMORANDUM PERIOD** - shall mean the period stated in the Declarations and herein.
8. **SELF-INSURED RETENTION** - shall mean the self-funded and pooled risk-sharing layer of coverage, provided for directly by ICRMA and as set forth in the Declarations, inclusive of the MEMBER DEDUCTIBLE.